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March 16, 2012

FILED/ACCEPTED

via hand delivery

MAR 16 2012

Federal Communications Commission
Office of the Secretary

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Attn: CGB Room 3-B431

**Re: Catholic Television Network of Youngstown Request for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-0529
CG Docket No. 06-181**

Dear Ms. Dortch:

Telecommunications of the Deaf and Hard of Hearing Inc. (TDI), the National Association of the Deaf (NAD), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the Hearing Loss Association of America (HLAA), the Association of Late-Deafened Adults (ALDA), and the Cerebral Palsy and Deaf Organization (CPADO), collectively, "Consumer Groups," respectfully submit this opposition to the petition of Catholic Television Network of Youngstown ("CTNY") to exempt its programming from the Commission's closed captioning rules, 47 C.F.R. § 79.1 (2010).¹ CTNY has provided insufficient information to demonstrate that it cannot afford to caption its programming.

¹ Public Notice, *Request for Comment: Request for Exemption from Commission's Closed Captioning Rules, Catholic Television Network of Youngstown*, Case No. CGB-CC-0529, CG Docket No. 06-181 (Feb. 15, 2012), http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0215/DA-12-215A1.pdf; *Petition for Exemption from Closed Captioning Requirement for Catholic Television*

Consumer Groups acknowledge the efforts of CTNY to provide “homebound, elderly, and disabled Catholics . . . weekly access to their Church.”² The requested exemption, however, would deny equal access to CTNY’s programming to members of its community who are deaf and hard of hearing. In fact, CTNY has identified the elderly and those otherwise unable to attend church in person as a segment of its community that its programming is designed to benefit.³ This constituency is also one that may distinctly benefit from the inclusion of closed captions. Maximizing accessibility through the comprehensive use of closed captions is a critical step in ensuring that all members of the community who are deaf or hard of hearing can experience the important benefits of video programming on equal terms with their hearing peers.

Because the stakes are so high for the millions of Americans who are deaf or hard of hearing, it is essential that the Commission grant petitions for exemptions from captioning rules only in the rare case that a petitioner conclusively demonstrates that captioning its programming would impose a truly untenable economic burden. To make such a demonstration, a petitioner must present detailed, verifiable, and specific evidence that it cannot afford to caption its programming, either with its own revenue or with alternative sources.

CTNY has provided insufficient information to demonstrate, or for the Commission to determine, that CTNY cannot afford to caption its programming. Consumer Groups recommend that CTNY be given 45 days either to comply with the closed captioning rules or to re-apply with sufficient information to allow the

Network of Youngstown, Case No. CGB-CC-0529, CG Docket No. 06-181 (Jan. 18, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021756111> [hereinafter *CTNY Petition*].

² *CTNY Petition*, *supra* note 1, at 2.

³ *Id.*

Commission and the public to accurately determine whether CTNY's request meets the legal standard for granting an exemption.

Under section 713(d)(3) of the Communications Act of 1934 ("1934 Act"),⁴ as added by the Telecommunications Act of 1996 ("1996 Act")⁵ and amended by section 202(c) of the Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA"),⁶ "a provider of video programming or program owner may petition the Commission for an exemption from the [closed captioning] requirements of [the 1934 Act], and the Commission may grant such petition upon a showing that the requirements . . . would be economically burdensome." In its October 20, 2011 Interim Standard Order, the Commission directed the Consumer and Governmental Affairs Bureau to evaluate all exemption petitions filed subsequent to October 8, 2010 using the "undue burden" standard in section 713(e) of the 1934 Act, pursuant to the Commission's existing rules in 47 C.F.R. § 79.1(f)(2)-(3).⁷

⁴ Pub. L. No. 416, ch. 652, 48 Stat. 1064 (1934) (codified as amended at 27 U.S.C. 613(d)(3)).

⁵ Pub. L. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 47 U.S.C.).

⁶ Pub. L. 111-260, 124 Stat. 2751 (2010) (to be codified in scattered sections of 47 U.S.C.).

⁷ *Order, Interpretation of Economically Burdensome Standard*, CG Docket No. 06-181, 26 FCC Rcd. 14,941, 14,961, ¶ 37 (Oct. 20, 2011), http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1123/FCC-11-159A1.pdf. The Commission proposed to finalize this interim directive in a Notice of Proposed Rulemaking released with the 2011 ISO. *Interpretation of Economically Burdensome Standard*, CG Docket No. 11-175, 26 FCC Rcd. 14,941, 14,961-62, ¶¶ 38-39 (proposed Oct. 20, 2011), 76 Fed. Reg. 67,397 (Nov. 1, 2011), http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1123/FCC-11-159A1.pdf. See also 2011 ISO at 14,960, ¶ 36. In some early adjudications, the Commission specifically analyzed exemption petitions under the four-factor rubric in section 713(e), analyzing whether each of the four factors weighed for or against granting a particular petition. E.g., *Home Shopping Club L.P.*, Case No. CSR 5459, 15 FCC Rcd. 10,790, 10,792-94 ¶¶ 6-9 (CSB 2000). Over the past decade, however, this factor-based analysis has evolved into several specific evidentiary requirements that must be satisfied to support a conclusion that a petitioner has demonstrated an undue economic burden sufficient to satisfy the requirements of section 713(e). See *Anglers for Christ*

To satisfy the requirements of section 713(e), a petitioner must first demonstrate its inability to afford providing closed captions for its programming.⁸ More specifically, a petitioner must first demonstrate its inability to afford providing closed captions for its programming.⁹ If a petitioner sufficiently demonstrates such an inability, it must also demonstrate that it has exhausted alternative avenues for obtaining assistance with captioning its programming.¹⁰ Where a petition fails to make either of the foregoing showings, it fails to demonstrate that providing captions would pose an undue burden, and the Commission must dismiss the petition.¹¹

I. CTNY's Ability to Afford Captioning

To sufficiently demonstrate that a petitioner cannot afford to caption its programming, a petition must provide both detailed information regarding the petitioner's financial status and verification that the petitioner has diligently sought out and received accurate, reasonable information regarding the costs of captioning its programming, such as competitive rate quotes from established providers.¹² Both showings are essential to enable the Commission and the public to verify that the petitioner in fact cannot afford to caption its programming and eliminate the possibilities that captioning would be possible if the petitioner reallocated its resources or obtained more reasonable price quotes for captioning services.

A successful petition requires, at a bare minimum, detailed information regarding the petitioner's finances and assets, gross or net proceeds, and other documentation

Ministries, Case Nos. CGB-CC-0005 and CGB-CC-0007, CG Docket No. 06-181, 26 FCC Rcd. 14,941, 14,955-56, ¶ 28 (Oct. 20, 2011) [hereinafter *Anglers 2011*].

⁸ See *Anglers 2011*, *supra* note 7, 26 FCC Rcd. at 14,955-56, ¶ 28.

⁹ See *id.*

¹⁰ See *id.*

¹¹ See *id.*

¹² See *id.*

“from which its financial condition can be assessed.”¹³ CTNY provides an income and expense report for its fiscal year 2012.¹⁴ It is difficult, however, to determine the precise nature and scope of this report, as there is no indication of when CTNY’s fiscal year 2012 begins or ends.¹⁵ It is also unclear whether the report provides a complete statement of all CTNY’s revenue, as numerous revenue line items are listed as “.00” in one or both of the “ACTUAL YTD” and “YE, BUDGET” columns.¹⁶

If the report provided is in fact representative of CTNY’s finances, then CTNY budgeted over \$200,000 in expenses for the year, and less than \$35,000 in revenue—a loss of more than \$165,000, nearly five times its revenue and nearly ten times CTNY’s quoted price of \$16,900 for captioning.¹⁷ It is unclear how CTNY could remain in business while operating at such a substantial loss, yet could not absorb the modest additional cost of captioning. While CTNY does not provide information about its assets, it reports that it generates substantial dividend and interest income and realized gains.¹⁸ If CTNY is able to leverage the assets underpinning this income to stay afloat while operating at a significant loss, it is unclear why it cannot also leverage those assets to pay for captioning.

CTNY also implies that closed captioning is impracticable because it “takes a week and most often would deprive the Mass of its topicality, contrary to Church guidelines.”¹⁹ CTNY provides no evidence, however, about whether it has investigated more timely captioning solutions, such as on-site or live captioning.

¹³ *E.g., Survivors of Assault Recovery*, Case No. CSR 6358, 20 FCC Rcd. 10,031, 10,032, ¶ 3 (MB 2005), cited with approval in *Anglers 2011*, *supra* note 7, 26 FCC Rcd. at 14,956, ¶ 28 n.100.

¹⁴ *CTNY Petition*, *supra* note 1, at Exhibit E.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at Exhibits D-E.

¹⁸ *Id.* at 2, Exhibit E.

¹⁹ *Id.* at 1.

Finally, CTNY offers an alternative to closed captioning by supplying “Seasonal Missalettes,” which contain instructions and texts for the celebration of Mass and are sent to households and other facilities quarterly.²⁰ Offering quarterly publications containing general information about Mass, however, is not a sufficient substitute for captioning CTNY’s weekly program and does not provide equal access of CTNY’s programming to deaf and hard of hearing viewers.

II. Alternative Avenues for Captioning Assistance

Even where a petition succeeds at demonstrating that a petitioner cannot afford to caption its programming, the petitioner must also demonstrate that it has exhausted all alternative avenues for attaining assistance with captioning its programming.²¹ In particular, a petitioner must show that it has sought out sponsorships or other sources of revenue to cover the cost of captioning its program and is unable to obtain alternative means of funding captions for its programming.²² CTNY does not include any information that indicates it has solicited sponsorships or other sources of revenue to cover the cost of captioning its program.

III. CTNY Does Not Qualify for the Local, Non-News Exemption

CTNY also argues that it qualifies for the local, non-news exemption to the Commission’s closed captioning rules.²³ The Commission has made clear, however, that the categorical exemption under section 79.1(d)(8) specifically requires that “locally produced and distributed non-news programming be produced by the *video programming distributor*, not programmers.”²⁴ CTNY does not qualify for this exemption because it is not a video programming distributor.

²⁰ *Id.*

²¹ See *Anglers 2011*, *supra* note 7, 26 FCC Rcd. at 14,955-56, ¶ 28 (internal citations omitted).

²² See *Outland Sports*, 16 FCC Rcd. at 13607-08, ¶ 7 (2001), *cited with approval in Anglers 2011*, *supra* note 7, 26 FCC Rcd. at 14,956, ¶ 28 n. 103.

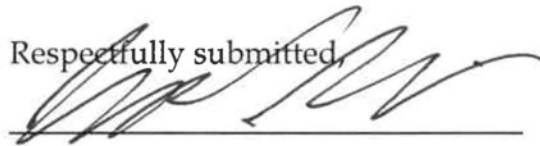
²³ *Id.*

²⁴ See *Anglers 2011*, *supra* note 7, 26 FCC Rcd. at 14,950, ¶ 17 n. 63 (emphasis added).

IV. Conclusion

CTNY's petition does not include sufficient information to conclude that CTNY cannot afford to caption its programming at this time or that it has exhausted all available alternative options for providing captioning. Because the petition fails to conclusively demonstrate that it would be unduly burdensome for CTNY to caption its programming under the high standard demanded under the 1996 Act and the CVAA, we respectfully urge the Commission give CTNY 45 days either to comply with the closed captioning rules or to re-apply with sufficient information, including its most recent financial statements, to allow the Commission and the public to determine whether CTNY's petition meets the legal standard for granting an exemption.

Respectfully submitted,



Blake E. Reid, Esq.[†]

March 16, 2012

*Counsel for Telecommunications for the
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[†] Counsel thanks Georgetown Law student clinicians Allyn Ginns and Cathie Tong for their assistance in preparing these comments.

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)

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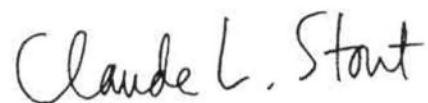
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CERTIFICATION

Pursuant to 47 C.F.R. § 1.16 and 79.1(f)(9), I, Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), hereby certify under penalty of perjury that to the extent there are any facts or considerations not already in the public domain which have been relied in the foregoing Opposition, these facts and considerations are true and correct to the best of my knowledge.

A handwritten signature in cursive script that reads "Claude L. Stout".

Claude Stout
March 16, 2012

CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on March 16, 2012, pursuant to the Commission's aforementioned Public Request for Comment, a copy of the foregoing Opposition was served by first class U.S. mail, postage prepaid, upon the petitioner:

Catholic Television Network of Youngstown
9531 Akron-Canfield Road, PO Box 430
Canfield, OH 44406-0430

A handwritten signature in black ink, appearing to read "Niko Perazich", is written over a horizontal line.

Niko Perazich
March 16, 2012